# NEVADA ADMINISTRATIVE CODE CHAPTER 459

# Containing NAC 459.9921 to 459.9995

# STORAGE TANKS

459.9921	Definitions.
459.9922	"Assessment" defined.
459.9923	''Aquifer'' defined.
459.9924	"Corrective action" defined.
459.9925	"Department" defined.
459.9926	"Dissolved product action level" defined.
459.9927	"Division" defined.
459.9928	"Ground water" defined.
459.9929	"Storage tank" defined.
459.993	Federal regulations: Adoption by reference of certain provisions; compliance required.
459.994	Testing of tanks for tightness.
459.995	Financial responsibility of owners and operators.
459.996	Releases: Reporting; protection of site; inspection by division.
459.997	Releases: Authority of administrator of division.
459.9971	Releases: Assessment of contaminated soil or water.
459.9972	Assessment required before closure of tank; removal of tank from ground.
459.9973	Presence of excessive petroleum in soil: Evaluation; assessment of risk; corrective
	action.
459.9974	Disposal and evaluation of contaminated soil.
459.9975	Monitoring of ground water.
459.9976	Corrective action required when excessive petroleum floating on surface of water of
	aquifer.
459.9977	Corrective action required when dissolved product action level exceeded; exemptions.
459.9978	Corrective action: Determining when aquifer is clean.
459.9979	Corrective action: Periodic monitoring; use of alternative technology.
459.9985	No relief of responsibility to secure approval or permit.
459.999	Severability.
	v

## PRACTICE BEFORE STATE ENVIRONMENTAL COMMISSION

459.9995 Appeal of final decision of state department of conservation and natural resources.

Note: The Administrative code provided below was downloaded as .html text from the Nevada Legislative Counsel Bureau's website (www.leg.state.nv.us). See the footer for the date of the codification of the below regulations. This regulation does not contain all citations for the Chapter Only those citations affected by the State Environmental Commission, the Division of Environmental Protection and the Board to Review Claims are presented, unless otherwise noticed.

#### STORAGE TANKS

**NAC 459.9921 Definitions.** As used in NAC 459.9921 to 459.999, inclusive, unless the context otherwise requires, the words and terms defined in NAC 459.9922 to 459.9929, inclusive, have the meanings ascribed to them in those sections.

(Added to NAC by Environmental Comm'n, eff. 10-9-90)

 $NAC\ 459.9922$  "Assessment" defined. "Assessment" means a test for the presence of a regulated substance.

(Added to NAC by Environmental Comm'n, eff. 10-9-90)

NAC 459.9923 "Aquifer" defined. "Aquifer" has the meaning ascribed to it in NAC 445A.812. (Added to NAC by Environmental Comm'n, eff. 10-9-90; A 1-23-96)

NAC 459.9924 "Corrective action" defined. "Corrective action" means a permanent remedy that is taken if a regulated substance is released to prevent the substance from migrating and causing danger to the present or future health of the public or to the environment.

(Added to NAC by Environmental Comm'n, eff. 10-9-90)

NAC 459.9925 "Department" defined. "Department" means the state department of conservation and natural resources.

(Added to NAC by Environmental Comm'n, eff. 10-9-90)

NAC 459.9926 "Dissolved product action level" defined. "Dissolved product action level" means the presence of a regulated substance or a constituent of such a substance in ground water or surface water in excess of the maximum level of contaminants allowed by the Federal Government.

(Added to NAC by Environmental Comm'n, eff. 10-9-90)

NAC 459.9927 "Division" defined. "Division" means the division of environmental protection of the department.

(Added to NAC by Environmental Comm'n, eff. 10-9-90)

NAC 459.9928 "Ground water" defined. "Ground water" has the meaning ascribed to it in NAC 444.579.

(Added to NAC by Environmental Comm'n, eff. 10-9-90; A 1-23-96)

NAC 459.9929 "Storage tank" defined. "Storage tank" has the meaning ascribed to "underground storage tank" in 40 C.F.R. § 280.12.

(Added to NAC by Environmental Comm'n, eff. 10-9-90)

## NAC 459.993 Federal regulations: Adoption by reference of certain provisions; compliance required.

- 1. The state environmental commission hereby adopts by reference the provisions of 40 C.F.R. §§ 280.10 to 280.116, inclusive, as they existed on July 1, 1995. A copy of the volume containing these provisions may be obtained at a cost of \$40 from the Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20402.
- 2. Each owner and operator of a storage tank shall comply with the requirements of 40 C.F.R. §§ 280.10 to 280.116, inclusive.
- 3. For the purposes of this section, any reference to "implementing agency" in 40 C.F.R. §§ 280.10 to 280.116, inclusive, shall be deemed to mean the division.

(Added to NAC by Environmental Comm'n, eff. 6-11-90; A 1-23-96)

## NAC 459.994 Testing of tanks for tightness.

- 1. Except as otherwise provided in this section, each owner or operator of a storage tank shall perform or cause to be performed a test of the tank for tightness in accordance with the schedule contained in subsection (c) of 40 C.F.R. § 280.40.
  - 2. The test must be performed by a contractor who is certified by the division.
- 3. The owner or operator shall retain a certificate from the person performing the test showing that the test has been performed. The certificate must be made on a form approved by the division.
- 4. In lieu of a test for tightness, each owner or operator may conduct any release detection methods prescribed in 40 C.F.R. §§ 280.43 and 280.44 as an acceptable means of release detection.
- 5. An operator of a storage tank that is not empty but is temporarily closed in accordance with 40 C.F.R. § 280.70 shall perform or cause to be performed a test of the storage tank for tightness in accordance with 40 C.F.R. §§ 280.40 to 280.45, inclusive.

- 6. Except as otherwise provided in this subsection, an abandoned storage tank must be tested for tightness in accordance with subsection (c) of 40 C.F.R. § 280.43 before it is returned to service. If a test of the abandoned storage tank will cause a threat to human health or the environment, as determined by the division, the division may waive the test for tightness or require any other method of testing in accordance with the provisions of subsection (h) of 40 C.F.R. 280.43 and subsection (c) of 40 C.F.R. 280.44. The allocation of costs pursuant to NRS 590.880 or 590.890 will be applied if there is a discharge from the storage tank.
- 7. A test for tightness is not required before a storage tank is closed pursuant to subsection (b) of 40 C.F.R. § 280.71 if the division:
  - (a) Has no record of the storage tank being installed, operated, or closed; and

(b) Is unable to locate the owner of the storage tank.

- 8. As used in subsection 6, "abandoned storage tank" means a storage tank that:
- (a) Is not maintained and whose owner or operator has not provided the division with a written statement of his intention to close the storage tank; or
  - (b) Is not in service and does not comply with 40 C.F.R. § 280.70 or 280.71.

(Added to NAC by Environmental Comm'n, eff. 6-11-90; A 3-26-92; 1-23-96)

#### NAC 459.995 Financial responsibility of owners and operators.

- 1. If requested by the division, each owner and operator of a registered storage tank shall submit to the division evidence of his financial responsibility. As used in this subsection, "registered storage tank" means a storage tank operated by a person who is:
  - (a) Required to demonstrate financial responsibility pursuant to 40 C.F.R. § 280.93; or
  - (b) Required to or who elects to register the storage tank pursuant to NRS 590.850 or 590.920.
- 2. An owner or operator may demonstrate his financial responsibility pursuant to the provisions of 40 C.F.R. §§ 280.94 to 280.103, inclusive.
  - 3. An owner or operator:
  - (a) Who operates a storage tank containing fuel for jet or turbine-powered aircraft; and
- (b) Who does not elect to obtain coverage pursuant to subsection 2 of NRS 590.920, shall comply with the requirements for financial responsibility contained in 40 C.F.R. §§ 280.90 to 280.116, inclusive.

(Added to NAC by Environmental Comm'n, eff. 6-11-90; A 3-26-92; 1-23-96)

## NAC 459.996 Releases: Reporting; protection of site; inspection by division.

- 1. The owner or operator of a storage tank shall report any release promptly in accordance with the requirements of NAC 445A.347 and 40 C.F.R. §§ 280.50 and 280.53.
- 2. As soon as possible after the release, the operator shall provide the division with a written description of how, when and where the release occurred. This report must include a description of any damage known to the operator to have been caused by the release.
- 3. The owner or operator shall take all steps for initial response and abatement prescribed in 40 C.F.R. §§ 280.60, 280.61, and 280.62 to protect the site of the release from further damage.
- 4. The owner or operator shall permit the division to inspect any property or records relating to the release or damage caused by the release.

(Added to NAC by Environmental Comm'n, eff. 6-11-90; A 1-23-96)

**NAC 459.997 Releases: Authority of administrator of division.** If a release occurs from a storage tank, the administrator of the division may, at such times as are reasonably required:

- 1. Question the owner or operator of the tank, under oath, about any matter relating to the release;
- 2. Examine the books and records of the owner or operator; and
- 3. Waive any of the provisions of subsections 1, 2, and 6 of NAC 459.9973 and require corrective action to be taken immediately based on:
  - (a) Any actual or imminent impacts to ground water; and
  - (b) Any hazards to human health and safety.

(Added to NAC by Environmental Comm'n, eff. 6-11-90; A 1-23-96)

# NAC 459.9971 Releases: Assessment of contaminated soil or water.

1. If a regulated substance is released, the division may require the owner or operator to assess the soil or water contaminated by the release to determine if hazardous waste generated from that release is present.

2. As used in this section, "hazardous waste" has the meaning ascribed to it in NAC 445A.826.

(Added to NAC by Environmental Comm'n, eff. 10-9-90; A 1-23-96)

#### NAC 459.9972 Assessment required before closure of tank; removal of tank from ground.

- 1. The owner or operator of a storage tank shall provide an assessment to the division before a storage tank is permanently closed.
  - 2. The assessment must be conducted:
- (a) Using analytical test method 8015 of the Environmental Protection Agency that is modified for petroleum hydrocarbons and other constituents as required by the division; and
- (b) On two soil samples that are obtained from native soil less than 2 feet below the bottom of the excavation, from opposite sides or ends of the excavation in an area where contamination is most likely to be present.
  - 3. The analysis must be conducted by a laboratory that is approved by the division.
  - 4. The owner or operator of a storage tank that is removed from the ground shall:
- (a) Dispose of or reuse the tank in accordance with the provisions of NRS 459.800 to 459.856, inclusive; and
  - (b) Maintain a record of the disposal or reuse. (Added to NAC by Environmental Comm'n, eff. 10-9-90; A 1-23-96)

# NAC 459.9973 Presence of excessive petroleum in soil: Evaluation; assessment of risk; corrective action.

- 1. If soil exceeds the soil action level, the division shall consider, after an initial response and abatement as prescribed in 40 C.F.R. §§ 280.60, 280.61, and 280.62, an evaluation based upon the following factors before taking any corrective action:
  - (a) The depth of ground water;
  - (b) The distance to irrigation or drinking water wells;
  - (c) The type of soil;
  - (d) The annual precipitation;
  - (e) The type of regulated substance released;
  - (f) The extent of contamination:
  - (g) The present and potential land use;
  - (h) The preferred routes of migration;
  - (i) The location of structures or impediments;
  - (i) The potential for a hazard related to fire, vapor or explosion; and
  - (k) Any other factor that is specific to a site as determined by the division.
- 2. If corrective action is required pursuant to subsection 1, the owner or operator may conduct an assessment of the site based on the risk that it poses to human health and the environment using test method E1739-95 of the American Society for Testing and Materials, or any equivalent method approved by the division, to determine the necessary corrective action or to establish that corrective action is not necessary. A reimbursement of the cost of the assessment and the corrective action taken may be sought pursuant to the provisions of NRS 590.700 to 590.920, inclusive.
- 3. The division shall determine whether an assessment complies with the requirements of test method E1739-95, or any equivalent method, and may reject, require revisions to, or withdraw its concurrence with the assessment at any time after the completion of the assessment because:
  - (a) The assessment does not comply with those requirements; or
- (b) Conditions at the site have changed or previously unidentified or new information has become available which may have a detrimental impact on human health or the environment, unless the new condition or information would not alter the results of the assessment.
- 4. The division shall provide written notice of its determination and the reasons for rejecting or requiring revisions to the assessment to the owner or operator. The owner or operator may submit a revised assessment to the division or take the appropriate corrective action.
- 5. Unless the assessment is rejected or returned for revisions, the division shall consider the results of the assessment pursuant to the evaluation of the level of petroleum hydrocarbons in the soil and the points of compliance to be elements of the plan for corrective action.
- 6. If corrective action is proposed pursuant to the requirements of this section or NAC 459.9976 or 459.9977, the owner or operator of a storage tank and his environmental manager, if applicable, shall prepare and submit to the division a written certification that the corrective action selected is cost effective.
- 7. As used in this section, "soil action level" means the presence in soil of a petroleum substance in excess of 100 milligrams per kilogram measured by using the analytical test method 8015 modified for petroleum hydrocarbons, or any other method approved by the division.

(Added to NAC by Environmental Comm'n, eff. 10-9-90; A 1-23-96)

#### NAC 459.9974 Disposal and evaluation of contaminated soil.

- 1. Soil that is contaminated:
- (a) By a petroleum hydrocarbon substance only, and is removed through a corrective action, must be disposed of:
- (1) In a municipal solid waste landfill unit or a class III site, after obtaining written approval from the holder of the permit to operate the landfill unit or site, and the solid waste management authority; or (2) At a disposal or treatment facility that is approved by the division.
- (b) By a petroleum hydrocarbon substance and any other hazardous substance must be evaluated by the responsible person, who is certified pursuant to NAC 459.970 to 459.9729, inclusive, to determine if the soil is a hazardous waste.
  - 2. As used in this section:
  - (a) "Hazardous substance" has the meaning ascribed to it in NRS 459.429.
  - (b) "Hazardous waste" has the meaning ascribed to it in NAC 445A.826.

(Added to NAC by Environmental Comm'n, eff. 10-9-90; A 1-23-96)

#### NAC 459.9975 Monitoring of ground water.

- 1. If a regulated substance is detected in or is suspected to have contaminated ground water, the owner or operator shall, with the approval of the division, install at least one monitoring well. The number of wells and the location, design, and installation of each well must be approved by the division of water resources of the department and the division.
  - 2. Monitoring of ground water must be conducted for:
- (a) Benzene, toluene, xylene, and ethylbenzene, by test method 624 of the Environmental Protection Agency or an equivalent method that is approved by the division;
- (b) Total petroleum hydrocarbons, by analytical test method 8015 modified for petroleum hydrocarbons; and
- (c) Any other pollutant that is present in the ground water as a result of the action of the owner or operator.

(Added to NAC by Environmental Comm'n, eff. 10-9-90; A 1-23-96)

# NAC 459.9976 Corrective action required when excessive petroleum floating on surface of water of aquifer.

- 1. The owner or operator shall take corrective action if the free product action level is exceeded.
- 2. As used in this section, "free product action level" means the presence of 1/2 inch or more of a petroleum substance that is free-floating on the surface of the water of an aquifer using a measurement of accuracy of .01 feet.

(Added to NAC by Environmental Comm'n, eff. 10-9-90)

# NAC 459.9977 Corrective action required when dissolved product action level exceeded; exemptions.

- 1. Except as otherwise provided in subsections 2 and 3, the owner or operator of a storage tank shall take corrective action if the dissolved product action level is exceeded.
- 2. The administrator of the division may exempt an owner or operator from the requirements of subsection 1 if a written request and supporting information are filed with the division. The administrator may grant an exemption if:
- (a) The ground water affected by the release does not serve as a source of drinking water and is not likely to serve as a source of drinking water in the future because it is economically or technologically impractical to:
  - (1) Recover the water for drinking because of the depth or location of the water; or
  - (2) Render the water fit for human consumption.
- (b) The total dissolved solids in the ground water is more than 10,000 milligrams per liter and the ground water is not reasonably expected to become a supply of drinking water; or
- (c) The owner or operator demonstrates that the contamination does not and will not in the future exceed the dissolved product action level beyond the boundary of the site.
  - 3. The division:
- (a) Will not require corrective action for dissolved product action level if the owner or operator provides a study which demonstrates that it is not feasible to achieve the water quality criteria based on a review of the available technology and the cost of corrective action.
- (b) May require the owner or operator to take corrective action for dissolved product that is below the dissolved product action level if the use or potential use of the ground or surface water affected by the release would be detrimental to the potential or actual beneficial use of that water.

(Added to NAC by Environmental Comm'n, eff. 10-9-90)

#### NAC 459.9978 Corrective action: Determining when aquifer is clean.

- 1. After corrective action, an aquifer is clean if:
- (a) The results of an assessment indicate that the affected ground water is consistently below the dissolved product action level; or
- (b) After treatment of ground water for not less than 1 year, the concentration of dissolved constituents versus time, measured monthly, fits a curve that is substantially linear and approaches zero slope at the final portion of the curve. The curve is defined by the following equation:

$$C = Cf + Coe^{-kt}$$

- 2. For the purposes of subsection 1:
- (a) "C" means the concentration of contaminant at t in micrograms per liter.(b) "Cf" means the final concentration in micrograms per liter which the curve approaches asymptotically.
- (c) "Co" means the difference between the final concentration and the concentration at time zero in micrograms per liter.
  - (d) "e" means the base of the natural log or 2.718. (e) "k" means the decay constant. (f) "t" means time in days.

(Added to NAC by Environmental Comm'n, eff. 10-9-90)

#### NAC 459.9979 Corrective action: Periodic monitoring; use of alternative technology.

- 1. After any corrective action has been taken, the responsible person shall monitor the ground water for not less than 1 year. The division shall determine the frequency of the monitoring, but in no case may the division require monitoring more frequent than once each month of that year.
- 2. The division may allow an owner or operator to use alternative technology when taking corrective action on soil or ground water.

(Added to NAC by Environmental Comm'n, eff. 10-9-90; A 1-23-96)

NAC 459.9985 No relief of responsibility to secure approval or permit. NAC 459.9971 to 459.9979, inclusive, does not relieve the owner or operator of the responsibility for securing an approval or permit from other governmental or regulatory entities.

(Added to NAC by Environmental Comm'n, eff. 10-9-90)

NAC 459.999 Severability. If any provision of NAC 459.9921 to 459.999, inclusive, or the application of any such provision to any person, thing or circumstance is held invalid, it is intended that the invalidity not affect the remaining provisions, or their application, that can be given effect without the invalid provision or application.

(Added to NAC by Environmental Comm'n, eff. 6-11-90; A 10-9-90)—(Substituted in revision for NAC 459.998)

## PRACTICE BEFORE STATE ENVIRONMENTAL COMMISSION

#### NAC 459.9995 Appeal of final decision of state department of conservation and natural resources.

- 1. Any person who requests a hearing before the state environmental commission concerning a final decision of the state department of conservation and natural resources pursuant to chapter 459 of NRS may do so by filing a request, within 10 days after notice of the action of the department, on form 3\* with the State Environmental Commission, 333 West Nye Lane, Capitol Complex, Carson City, Nevada 89710.
- 2. The provisions of NAC 445B.875 to 445B.899, inclusive, apply to a hearing of the state environmental commission requested pursuant to subsection 1.

\*(See adopting agency for form.)

(Added to NAC by Environmental Comm'n, eff. 10-29-93)

# # # #